



**DEPARTMENT OF ENVIRONMENTAL QUALITY
POLICY AND PROCEDURES**

**SUBJECT: DISCLOSURE OF PUBLIC RECORDS:
FREEDOM OF INFORMATION ACT REQUESTS**

Number: 01-006

Date: November 7, 1997

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Revision: July 11, 2007

ISSUE:

Michigan's Freedom of Information Act, 1976 PA 442, as amended (FOIA), prescribes how and when state government must respond to requests for the disclosure of public records. The Department of Environmental Quality (DEQ), as a public body, is subject to this statute. The following policy and procedures govern FOIA requests.

DEFINITIONS:

- "FOIA" means the Freedom of Information Act, 1976 PA 442, as amended.
- "FOIA Coordinator" means the individual designated by a public body in accordance with Section 6 of FOIA to accept and process requests for public records. The FOIA Coordinator serves as the DEQ resource for questions regarding public disclosure of records, the liaison with the Department of Attorney General for legal guidance relating to public disclosure of records, and the authorized party to issue denials of requests for exempt public records and to approve requests for fee waivers.
- "Division/Office/District FOIA Liaisons" means the person(s) designated to serve as the FOIA Liaison in each Division/Office and District. FOIA Liaisons will generally be responsible for the fulfillment of requests for public disclosure of records within their Division/Office or District.
- "Partial Denial" means part of the FOIA request describes information that may be exempted under the FOIA or other state or federal law, or shall not be disclosed in compliance with another state or federal law or regulation.
- A "Public Record" is any writing, prepared, owned, used, in the possession of, or retained by the DEQ in the performance of its official functions. Records may be in any form, including typewritten, handwritten, electronic (i.e., e-mail), photocopied, tape recorded or video recorded, maps, pictures, and symbols, and any other means of recording or retaining meaningful content. Under the FOIA, a public record does not include computer software.
- "Protection of Records" means a public body may make reasonable rules necessary to protect its public records from loss, unauthorized alteration, mutilation, or destruction. In granting a request to inspect public records, the DEQ has established rules to prevent excessive and unreasonable interference with the discharge of its functions.
- "Waiver of Fee" means a public record may be furnished without charge or at a reduced charge if the public body determines that a waiver or reduction of the fee is in the public interest. The FOIA Coordinator determines when a waiver of fee is appropriate.
- "Written request" means a writing that asks for information, and includes a writing transmitted by facsimile, electronic mail, or other electronic means.

POLICY:

The DEQ encourages public participation in and knowledge of its decision-making processes. This includes providing public access to DEQ records as required under the FOIA. In order to implement the FOIA, the DEQ establishes the following procedures.

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GENERAL PROCEDURES:

Response Time: The FOIA requires the DEQ to respond to FOIA requests in writing. The five-business-day time period begins the first full business day after the request reaches any employee in a DEQ office. Within the five-business-day time period the DEQ must (a) grant the request; (b) deny the request; (c) grant in part and deny in part; or (d) take a ten-business-day extension of time to respond. The FOIA Liaison may obtain a ten-business-day extension in which to respond to a request requiring more time by sending the requester a letter that specifies the reason(s) for the extension and the date by which the DEQ will issue its written notice of disclosure determination (EQP1047eFOIALiaison10-dayExtension).

Contact with the Department of Attorney General: The FOIA Liaisons should not contact the Department of Attorney General for assistance; all FOIA-related contacts with the Department of Attorney General should be made through the FOIA Coordinator.

Information Exempt from Disclosure: Examples of exemptions from disclosure permitted by the FOIA include records that, if released, would (1) result in a clearly unwarranted invasion of an individual's privacy, such as home addresses and other personal identifiers, bank account numbers, and credit card numbers; (2) disclose social security numbers; (3) compromise or interfere with law enforcement proceedings; (4) interfere with a person's right to a fair trial or impartial administrative adjudication; (5) disclose the identity of a confidential law enforcement source; (6) compromise attorney-client privilege; (7) compromise a competitive bid process; (8) disclose test questions, answers, or scoring keys; or (9) disclose medical information of an identified individual. See Section 13 of the FOIA for the act's exemption provisions.

Specific DEQ procedures for responding to requests for information follow:

PROCEDURE A: Responding to a Request for Copies of DEQ Records

Responsibility

Action

Any DEQ Employee

1. Receives a FOIA request.
2. Date stamps request.
3. Immediately forwards the request to the FOIA Liaison.

FOIA Liaison

4. Reviews the request to determine if the request can be filled exclusively by their Division/Office/District.
 - A. If yes, proceeds to Step 6.
 - B. If the request requires the involvement of other Division/Offices, Districts, and/or Departments, faxes the written request to the FOIA Coordinator.

FOIA Coordinator

5. Reviews the request to determine what Division/Offices and/or other Departments may have records responsive to the request.
 - A. If the request is for records maintained exclusively in another Department, issues a Records Don't Exist denial letter (EQP1048aRecordsDontExist).
 - B. If the DEQ may have records responsive to the request:
 1. Sends a letter to the requester indicating the Division/Office the request is being forwarded to for processing and issues a ten-business-day extension of time (EQP1440FOIACoordinator10-dayExtension).

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Responsibility

Action

FOIA Coordinator, cont.

2. Routes FOIA as a portable document format (PDF) file to Division/Office(s) FOIA Liaison(s). In the upper right hand corner of the FOIA PDF file, places the DEQ FOIA tracking number, due date, and Division/Office(s) responsible for responding to the FOIA.

FOIA Liaison

6. Reviews the request to determine if the requested record exists.
 - A. If yes, then proceed to Step 7.
 - B. If no, send a Records Don't Exist denial letter (EQP1048aRecordsDontExist).
7. Reviews the request with program staff to determine if the record is located at the Division/Office/District or whether the record is exempt.
 - A. If the entire record is located in the Division/Office/District, sends the request to the appropriate staff for processing. Proceeds to Step 8.
 - B. If the FOIA is received in the Division/Office and it is determined that records may also be located in the District, the Division/Office FOIA Liaison routes FOIA to District for processing. The Division/Office FOIA Liaison may route FOIA as PDF file to District(s) FOIA Liaison(s).
8. Reviews the request to determine if the request is specific enough to locate the desired record (see FOIA Section 3). If the request is so broad that it encompasses a large volume of information; or if the request is not specific enough:
 - A. Estimates the total cost to fulfill the request, and if the total cost is greater than \$50.00, prepares the FOIA Fee Estimate Letter (EQP1445FOIAFeeEstimate). Refer to Step 13 for further information on calculating total costs.
 - B. Contacts the requester to clarify the request.
 1. When the FOIA Liaison has a conversation with the requester that changes the original FOIA request, prepares a letter to the requester stating the FOIA Liaison's understanding of how the request is amended (EQP1583FOIACChangeRequest).
 2. If the requester cancels the FOIA after a conversation with the FOIA Liaison, prepares a Confirm Request Cancellation Letter (EQP1444FOIACanceled).
NOTE: The FOIA Letter to Confirm Request Cancellation is to be used only for those FOIAs received directly in the Division/Office/District.
9. Reviews request to determine whether requested record is exempt from disclosure.
 - A. If the record is part of ongoing litigation and the requester is named in the lawsuit, contact the FOIA Coordinator immediately.
 - B. If the requester is not named in the lawsuit or if the record is not part of ongoing litigation, proceeds to Step 9.C.

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Responsibility

Action

FOIA Liaison, cont.

C. If all or part of the requested record appears to be exempt from disclosure (see description of exempt records in General Procedures), prepares and sends full or partial denial letter to the FOIA Coordinator for signature.

1. The following templates provide examples for partial denial letters:

- a. EQP1049edenial13-1-g – attorney-client privilege.
- b. EQP1049edenial13-1-m – notes and communications within a public body.
- c. EQP1049edenial – all other denials.

D. If the requested record is not exempt from disclosure, proceeds to Step 13.

FOIA Coordinator

10. Signs full or partial denial letter and returns to the Division/Office, as necessary.

FOIA Liaison

11. Sends signed full or partial denial letter along with requested records.

12. If the requester wants to review the records with an on-site appointment, the requester is charged for the following costs (see Step 13.B. and 13.C. for labor rates and copying charges):

- A. Copying of the records.
- B. Staff time for the search, retrieval, examination, review, and separation of exempt and nonexempt information.
- C. If a staff member is necessary to monitor a requester's inspection of records, the requester is charged for staff time utilizing the clerical rate. Staff members should be present at record inspections, if (a) the integrity of the file may be in question, or (b) Division/Office/District procedures require it.
NOTE: On-site appointments should be arranged with the appropriate staff to ensure that the requested records and staff are available.

13. Estimates and calculates the fee to be charged for providing the requested record. Request a 50 percent deposit if the total costs exceed \$50.00.

- A. Estimates and calculates the number of hours required to search for, retrieve, examine, review, and separate exempt and nonexempt information, and mail the requested material.
- B. Multiplies the number of hours calculated in 13.A. by the hourly wage of the lowest-paid employee in the agency capable of performing the aforementioned tasks. The hourly wage rates are as follows:
 1. Clerical Rate: \$25.20 - Fiscal Year (FY) 2007.
 2. Professional Rate: \$27.60 – FY 2007.
- C. Adds the cost of copying (includes staff time and paper) to the amount calculated in Step 13.B. The copying charge is \$0.46 (FY 2007) per page. Any copying charges for "off-site" copies are to reflect the actual costs.

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Responsibility

FOIA Liaison, cont.

Action

NOTE: "Off-site" copies are those that require duplication by a private copy center. Any records larger than 8 1/2" x 11", such as maps, photographs, or color copies, may require "off-site" copying.

D. Adds the cost of postage to the amount calculated in Step 13.C. This is the total cost to fulfill the FOIA request.

14. Prepares EQP1046eFOIAForm for billing or issues invoice (if authorized).

A. If the cost is less than \$50.00, prepare billing or invoice pursuant to division/office procedure.

B. If the cost is greater than \$50.00, FOIA Liaison must send billing or invoice, pursuant to Division/Office procedure, with a letter requesting partial payment of one-half of the total fee prior to fulfillment of request.

NOTE: New FOIA requests must be processed even if the requester has outstanding invoices that have not been paid.

15. Upon receipt of partial payment, duplicates requested records, prepare, and send final billing or invoice, pursuant to Division/Office procedure, with records.

16. Sends copied records and invoice or billing to requester.

FOIA Coordinator

17. Review and update hourly wage and per-page rates on an annual basis, as necessary.

PROCEDURE B: FOIA Record Keeping

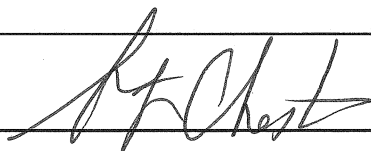
Responsibility

FOIA Coordinator and/or FOIA Liaison

Action

1. Shall keep a copy of all written requests for public records on file for no less than one year.

Approved: _____



Date: _____

7-11-07